**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Writ petition No. 261 (S/B) of 2003**

Rajendra Singh Negi S/o Late Sri K.S. Negi,
At present working as District Horticulture Officer,
Gopeshwar, District Chamoli

... Petitioner

**Versus**

1. State of Uttaranchal through
   Secretary Horticulture, Uttaranchal, Dehradun
2. Director, Horticulture and Food Processing
   Department, Chaubatia, Ranikhet, District Almora

... Respondents

**Hon'ble P.C. Verma, J.**
**Hon'ble B.C. Kandpla, J.**

**Dated: March 24, 2006**

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned orders dated 19.10.2002 and 03.12.2002 (Annexure Nos.6 and 8 to the petition) passed by Respondent No.2.

2. Briefly stated facts are that the petitioner was appointed as Senior Marketing Inspector at Bhowali, District Nainital in the Horticulture Department on 31.07.1976. Thereafter, the petitioner was promoted to the post of Marketing Officer in the pay scale of Rs. 850-1720 per month and he was posted in Horticulture Department, Bhowali, Distt. Nainital vide order dated 19.12.1986. Thereafter, on 10.04.1990, the Director, Horticulture Department issued a seniority list in which the petitioner was shown at Sl. No. 190 whereas the name of one Sri Uma Shaker Singh was shown at Sl. No.11 in the said list. After the enforcement of U.P. Horticulture & Food Processing Group-B Service Rules, 1993, the

respondents sent a requisition to the Government for selection on the post of District Horticulture Officer and other equivalent but the name of the petitioner was not sent by respondents for promotion but the name of Uma Shanker Singh, who was junior to the petitioner was sent for promotion. After sending the requisition by the respondents for promotion to Group-B (Class-2) post, the respondents promoted Sri Uma Shanker Singh to the post of District Horticulture Officer in Horticulture Department on 19.9.1994. Being aggrieved, the petitioner made a representation to the Respondent No.1. Thereafter, in the year 1998, the name of the petitioner was sent through a requisition for promotion to the post of District Horticulture Officer. The petitioner was promoted vide order dated 4.2.2000 by the respondents. On 11.03.2002, the respondent No. 1 passed an order by which the petitioner was given selection grade in pay scale of Rs. 10000-15200 w.e.f. 20.12.1994. Thereafter, on 19.10.2002, the Respondent No.2 passed an order giving selection grade to the petitioner w.e.f. 4.2.2000 when he was regularly promoted to the post of Horticulture Development Selection (Class-2) in the pay scale of Rs.8000-13500 whereas the petitioner has been working in the said pay scale w.e.f. 20.12.1986. Thereafter, on 3.12.2002 the Respondent No.2 passed an order modifying the date granting selection grade to the petitioner w.e.f. 20.12.1994 to 4.2.2000 by which he directed for recovery of excess amount paid to the petitioner in pay scale of Rs.10000-15200. Feeling aggrieved, the petitioner has come up in the writ petition.

3. We have heard learned counsel for the parties and perused the entire evidence on record.

4. The selection of the petitioner was made by the Departmental Selection Committee on ad-hoc basis and his ad-hoc appointment was continued till 04.02.2000 i.e. the date on which he was regularized. There is no lapse on the part of the petitioner in delay of regularization. It is the department which delayed the regularization of the petitioner and regularized the petitioner in the year 2000.

5. By Government Order dated 11.03.2002, the petitioner was given selection grade on the basis of his continuous service from 20.12.1986 and in this Government Order, his date of regularization is also mentioned and he was given selection grade w.e.f. 20.12.1994.

6. By Government Order dated 19.10.2002, the selection grade has been given to the petitioner w.e.f. 04.02.2000 treating him that he was regularized on 04.02.2000 and recovery of the arrears drawn by the petitioner has been sought by the impugned notice in the writ petition.

7. The Government Order dated 22.08.1996 contained in Annexure No.6 to the counter affidavit provides that the selection grade shall be paid to the regular employees who holds the substantive post and have completed -8- years of service. This Government Order does not say that a candidate must held the post in substantive capacity for 10 years and only he shall be paid the selection grade. At the time of grant of selection grade i.e. 14.03.2002, admittedly the petitioner was held in substantive capacity and since he was holding the post from 1981, therefore, he had completed 8 years of service on 20.12.1994 and as such both the conditions were fulfilled. The Government Order dated 19.10.2002 has

been passed on misconception and misleading of the Government Order dated 02.03.1993 and 22.08.1996 which provides for two conditions. The first condition is that the candidate must be holding the post in substantive capacity and the second condition is that he has put in -6- years of service on that post. Now, the petitioner has put in -6- years of service and prior to the regularization, he was on ad-hoc basis but the continued to service uninterruptedly till his regularization and after regularization he become the substantive appointee on the post. Even in cases of reckoning of the seniority of the promotees, the regularization Rule does not prescribe any date rather it leaves for determination. Rule 7 of the U.P. Regularization of Ad-hoc Promotions (on posts within the purview of Public Service Commission) Rules, 1988 providers that a person appointed under these Rules, shall be entitled to seniority in accordance with the relevant service rules or orders, regulating conditions of service of persons regularly appointed in the service or on the post, and for this purpose selection under these Rules shall be deemed to be selection under the said service rules or orders.

8. Therefore, in view of this, the past service of the petitioner on ad-hoc basis is liable to be counted for the purpose of seniority even it is liable to be counted for the purpose of seniority and for the past service but it cannot be granted for the purpose of grant of selection grade. Therefore, the order dated 19.10.2002 is liable to be set aside and is hereby set aside. Consequently, the recovery notice dated 31.12.2002 is also quashed. The writ petition is allowed. No order as to costs.

**(B.C. Kandpal, J.)** **(P.C. Verma, J.)**